

REMARKS

This application contains claims 1-42. Claims 9 and 33 have been canceled without prejudice. Claims 1, 10, 18, 25 and 34 are hereby amended. No new matter has been introduced. Reconsideration is respectfully requested.

Claims 1-17 were rejected under 35 U.S.C. 101 for being directed to non-statutory subject matter, on the grounds that that the claimed method "is not tangibly embodied in a manner so as to be executable." Applicant respectfully traverses this rejection. There is no requirement in 35 U.S.C. 101 or in the applicable case law that a process be "tangibly embodied" or "executable" in order for it to be patentable.

On the contrary, in a recently-published precedential opinion in *Ex Parte Lundgren* (Bd. Pat. App. & Int. 2003-2088), the Board of Patent Appeals and Interferences made clear that the only exclusions from patent protection for processes under 35 U.S.C. 101 are "laws of nature, physical phenomena and abstract ideas." The methods recited in claims 1-17 do not fall into any of these categories. Claim 1 in Lundgren, which was quoted by the Board as representative of the subject matter on appeal, makes no mention of a computer or any other tangible or executable element. The Board

reversed the Examiner's rejection of this claim under 35 U.S.C. 101. Therefore, Applicant respectfully submits that the rejection of claims 1-17 under 35 U.S.C. 101 should similarly be withdrawn.

Claims 1, 6, 7, 9, 18, 22, 25, 30, 31 and 33 were rejected under 35 U.S.C. 103(a) over Browning (U.S. Patent 6,081,629) in view of Bull (U.S. Patent 6,735,574). Applicant has amended independent claims 1, 18 and 25 in order to clarify the distinction of the present invention over the cited art. The amended claims incorporate the limitations of claims 9 and 33, now canceled.

Amended claims 1, 18 and 25 recite a method, apparatus and computer software product for evaluating verification of data by a human operator. The method includes measuring a time duration over which the operator interacts with a display in verifying data presented on the display. The verification of the data by the operator is evaluated so as to assign a confidence level to the data responsive to the time duration.

Browning describes a handheld scanner and accompanying remote access agent. The scanner includes an integrated LED/LCD display for the operator to verify a correct scan (col. 2, lines 58-62). The Examiner acknowledged

that Browning does not relate to evaluating verification of the data by the operator.

Bull describes a method and system for tracking employee productivity. The productivity tracking (PT) system comprises a PT client component, which provides data entry fields through which a call center representative can record productivity information including start and end periods of activity and exceptions to normal activity (col. 2, lines 36-40). The system provides reports to assist a supervisor in evaluating the productivity of the users. Bull, in other words, uses information recorded by users of the system in order to evaluate the users themselves. He makes no suggestion that the duration over which an operator interacts with data could be used in evaluating the data, let alone assigning a confidence level to the data as recited in the amended claims.

In rejecting claims 9 and 33, the Examiner also cited Lorie (U.S. Patent 5,933,531). As explained in response to the previous Official Action in this case, however, Lorie relates to evaluation of results obtained by a computerized process (automatic context analysis), and not to evaluating results of verification by a human operator. Specifically, Lorie describes a method for verification and correction of

automatic OCR results, in which an automatic context analyzer processes fields that are good enough, in terms of the confidence of the OCR results, to expect resolution by the context analyzer (col. 3, lines 24-30, and col. 5, lines 62-67). Confidence is measured automatically "by a suitable means" (col. 5, lines 37-47), but Lorie does not specify what these means might be. Whatever confidence measure Lorie might have chosen, it would necessarily have been based on evaluating the automatic OCR process performed by the computer. Lorie makes no suggestion of evaluating operator interaction at all, let alone assigning a confidence level based on evaluating verification performed by a human operator, as recited in claims 1, 18 and 25. Lorie's confidence levels are assigned in "Phase A" (Figs. 4 and 5), before any data are even passed to a human operator.

Therefore, to summarize, the combination of Browning, Bull and Lorie would not have led a person of ordinary skill in the art to the method of claim 1, in which the time duration over which an operator interacts with data is used in assigning a confidence level to the data. Claims 1, 18 and 25, as amended, are thus believed to be patentable over the cited art. In view of the patentability of these independent claims, dependent claims 6, 7, 22, 30 and 31 are believed to be patentable, as well.

Dependent claims 2-5, 8-17, 19-21, 23, 24, 26-29 and 32-42 were rejected under 35 U.S.C. 103(a) over Browning in view of Bull and further in view of one or more of Matsukawa et al. (U.S. Patent 6,470,336), deCarmo et al. (U.S. Patent 6,181,339), Laurie (cited above), Strub et al. (U.S. Patent 6,563,532), Burch (U.S. Patent 6,295,387), Graves (U.S. Patent 6,454,173), Allen (U.S. Patent 4,256,953), Melville et al. (U.S. Patent 5,982,555), Radomsky et al. (U.S. Patent 6,600,899) and Graham et al. (U.S. Patent 6,281,879). Claims 9 and 33 have been canceled without prejudice, as noted above. Claims 10 and 34 have been amended for proper dependence following the cancellation of claims 9 and 33. In view of the patentability of amended independent claims 1, 18 and 25, dependent claims 2-5, 8, 10-17, 19-21, 23, 24, 26-29, 32 and 34-42 are believed to be patentable over the cited references. Applicant further believes that the dependent claims recite subject matter that is independently patentable over the cited references, but for the sake of brevity will refrain from arguing the specific patentability of the dependent claims at this point.

Applicant believes the amendments and remarks presented hereinabove to be fully responsive to all of the grounds of rejection raised by the Examiner. In view of these amendments and remarks, Applicant respectfully submits that

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all of the claims in the present application are in order for allowance. Notice to this effect is hereby requested.

Respectfully submitted,

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